

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. OF 2012**

**A LOCAL LAW AMENDING CHAPTER 42 OF THE TOWN  
CODE ENTITLED “PUBLIC WATERWAYS; STRUCTURES”AND  
CHAPTER 23 OF THE TOWN CODE ENTITLED  
“GOVERNMENTAL DEPARTMENTS”.**

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to make amendments to Chapter 42 of the Town Code entitled “Public Waterways; Structures” and Chapter 23 of the Town Code entitled “Governmental Departments” in order to clarify certain provisions of Chapter 42 and 23 to delineate the roles and responsibilities of various Town departments in their administration, implementation and enforcement functions.

Section 2.

Chapter 42 of the Town Code is hereby amended as follows:

Chapter 42, PUBLIC WATERWAYS; STRUCTURES

[HISTORY: Adopted by the North Hempstead Town Board 1-7-1997 by L.L. No. 1-1997. This local law also repealed former Ch. 42, Public Waterways; Structures, adopted 10-13-1964, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Appearance tickets -- See Ch. 4.

Regulation of Town park, Town gardens and Town docks -- See Ch. 39.

Water -- See Ch. 47A.

Town lands, shorefronts and land underwater -- See Ch. 59.

Waterways -- See Ch. 69.

Zoning -- See Ch. 70.

**ARTICLE I, Legislative Findings.**

§ 42-1. Legislative findings.

It is hereby declared and found that it is vital to the public welfare of the inhabitants of the Town of North Hempstead that structures in public waterways be erected and maintained in such manner that all such structures contribute to the health, safety and general welfare of the community; contribute to the protection and preservation of the property of the Town and its inhabitants; benefit trade and generally secure the general welfare of the public; and that the adoption of this chapter is within the public interest.

§ 42-2. Legislative purpose.

It is the purpose of this chapter to:

- A. Regulate construction, reconstruction or placement of structures and bulkheads in all waterways to ensure free and safe movement of vessels.
- B. Prevent the degradation of marine ecosystems that may be caused by the improper construction and placement of structures and bulkheads in waterways.
- C. Preserve and maintain open and clear space in waterways.
- D. Provide that publicly owned lands and waters are held in trust for the beneficial use and enjoyment of all the public.
- E. Preserve, enhance and encourage water-dependent and marine activities.
- F. Generate revenue dedicated to the Town's efforts to preserve, protect and enhance all waterways.

#### § 42-3. Applicability.

This chapter applies to all regulated activities occurring in and on public waters and lands under water which are within or under the jurisdiction of the Town of North Hempstead.

### **ARTICLE II, Definitions.**

#### § 42-4. Definitions.

As used in this chapter, the following words or phrases shall have the meanings annexed to each:

**BUILDING DEPARTMENT** -- The Department of Building, ~~and~~ Safety Inspection and Enforcement of the Town of North Hempstead.

**BULKHEAD** -- Any structure, except a building, positioned adjacent to the shore, the primary function of which is to retain soil or other material from eroding into a waterway or to protect the land from wave damage. [Amended 4-1-2003 by L.L. No. 4-2003]

**CHANNEL** -- A federal, state or Town ~~or locally~~ designated navigation accessway. [Amended 4-1-2003 by L.L. No. 4-2003]

**COMMERCIAL MOORING** -- A mooring used by a commercial entity or o ~~One~~ providing a mooring for hire in conjunction with a marine commercial use.

**COMMISSIONER OF BUILDINGS** -- The person designated by the Town Board as the Commissioner of Buildings, Safety Inspection and Enforcement.

**COMMISSIONER OF PLANNING** -- The person designated by the Town Board as the Commissioner of Planning and Environmental Protection ~~Economic Development~~.

**COMMISSIONER OF PUBLIC SAFETY -- The person designated by the Town Board as the Commissioner of Public Safety.**

DATUM PLANE -- The mean sea level or average height of the sea in accordance with Nassau County Datum.

DIRECTOR OF HARBOR AND MARINE ENFORCEMENT -- The person designated by the Commissioner of Public Safety as the manager of the Division of Harbor and Marine Enforcement.

DOCK -- Any permanent or seasonal structure extending over the water's surface, except a building connected to a bulkhead or the upland, which is designed to secure vessels and provide access from the shore to a body of water. The term includes the terms "wharves," "piers," "fixed docks," "floating docks," or "floats."

FAIRWAY -- A federal, state or Town ~~locally~~ designated navigation accessway. [Added 4-1-2003 by L.L. No. 4-2003]

FIXED DOCK -- A dock that is generally anchored, to pilings, to the underwater land and that allows for the flow of water beneath the decking. [Amended 4-1-2003 by L.L. No. 4-2003]

FLOAT -- Any structure, buoyant on the water surface, ~~extending seaward~~ affixed and secured in place to the shore, a bulkhead or a dock, whose purpose is to berth and secure vessels and provide a means of access to and from the shore. The term "float" includes a floating dock.

FLOATING STRUCTURE -- Any structure buoyant on the water surface, in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation, which functions substantially as a land structure while the same is moored or docked within the municipal limits of the Town of North Hempstead, whether such vessel is self-propelled or not.

GUEST MOORING -- A mooring to be used on a temporary basis by a guest of a yacht club. [Amended 4-1-2003 by L.L. No. 4-2003]

GUEST VESSEL -- Any vessel owned or chartered by a person who does not hold a current mooring permit issued by the Town, which vessel is temporarily moored as provided in this chapter.

**LIGHTHOUSE -- Any tower or other structure used to display or flash a bright light and/or audible signal for the guidance of vessels in avoiding dangerous areas located within the geographical boundaries of the Town of North Hempstead.**

LOT -- A parcel of land, coincident with a lot or lots shown on a map of record, filed in the Nassau County Clerk's office.

MARINA -- A dock or a commercial mooring area, operated for profit or to which public patronage is invited, providing mooring or docking facilities for boats or vessels within the area of the Town of North Hempstead.

MARINE COMMERCIAL USE -- A use that serves a marina, fuel dock, commercial mooring facility, barge or tanker terminal, boat rental or leasing facility, commercial fishing loading/off-loading facility or other structure designed to secure or makefast a commercially operated vessel.

**MEAN LOW WATER -- The line on the shore established by the average of the height of the diurnal low water at a particular location measured over a lunar cycle of 19 years.**

**MEAN HIGH WATER -- The line on the shore established by the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.**

MOORING -- The attachment of a vessel to the underwater land by means of mooring tackle so designed that, when such attachment is terminated, some portion of the tackle remains attached to the underwater land and is not taken under the control of the vessel.

**MOORING PERMIT -- A permit issued to install or maintain a mooring.**

MOORING PILE -- A pole or post secured to the underwater land, protruding above the water surface, the sole purpose of which is to secure a vessel(s).

MOORING TACKLE -- The hardware used to secure a vessel at mooring.

MULTIFAMILY RESIDENTIAL USE -- A residential land use involving four or more living units or homes.

NAVIGABLE WATER -- A waterway having a depth of at least four feet at mean low water ~~as defined by the Nassau County Datum Plane.~~ [Amended 4-1-2003 by L.L. No. 4-2003]

NONMARINE COMMERCIAL USE -- A commercial land use other than a marine commercial use.

**PERIMETER** -- ~~The in-water boundary of an area consisting of a series of connected~~ Imaginary lines **that define an area** on a plan, map, **chart** or other diagram drawn generally perpendicular and parallel to the shore or the lines of designating channels that encompass all related structures **or moorings** that function together to create a component of an ~~adjacent~~ upland facility or use.

PERIMETER **MOORING PERMIT** -- A permit issued for use of an approved mooring field ~~or to locate structures within a prescribed~~ **perimeter for multifamily residential, marine commercial, nonmarine commercial or yacht club uses** boundary.

PERIMETER PERMIT -- ~~A permit issued for use of an approved mooring field or to locate structures within a prescribed boundary.~~

PERIMETER **STRUCTURE** RECONFIGURATION PERMIT -- **A permit issued to construct, maintain, erect, enlarge, install, alter, improve, remove or demolish a structure or series of structures within a prescribed perimeter which either is or is to be adjacent to upland for marine commercial or yacht club uses.** ~~The in-water boundary of an area consisting of a series of connected imaginary lines on a plan, map or other diagram drawn generally perpendicular and parallel to the shore or the lines of designating channels that encompass all related structures that function together to create a component of an adjacent upland facility or use.~~

PERMIT -- A written authorization to conduct an activity regulated by this chapter. The term "permit" shall include a renewal permit.

PERSON -- Any individual, partnership, corporation, association or any other legal entity.

PILE or SPILE -- An individual or grouping of poles or posts, secured to underwater land, protruding above the water surface, the sole purpose of which is to secure a dock(s), float(s) or other such structures. The pile or spile should be considered ancillary to the structure(s).

PLATFORM -- A horizontal surface structure which extends out from land adjacent to a waterway and is cantilevered or held in place by pilings, designed to gain access to a ramp or float.

RAMP -- A structure used to gain access from a bulkhead, fixed dock or platform to a float.

SEASON -- The time between April 1 and November 30 of the same calendar year.

SLIP -- The berthing place for a single vessel alongside the shore or structural installation.

STRUCTURE -- Includes but is not limited to a dock, pier, bulkhead, wharf, float or series of floats, platform, boom revetment, jetty, utility line, permanently moored vessel, aid to navigation or any fixture or appurtenance extending under, to, over or into the navigable waters or the waterways as defined herein, which is intended or may be used or is capable of being used for access to a waterway or vessels on a waterway or for the berthing of vessels.

**STRUCTURE PERMIT -- A permit issued to construct, maintain, erect, enlarge, install, alter, improve, remove or demolish a structure which either is or is to be adjacent to upland residential, multifamily residential, marine commercial, nonmarine commercial or yacht club uses.**

SWIMMING FLOAT -- Any structure buoyant on the water surface and moored to the bottom, used for swimming, diving, snorkeling, scuba diving and other related activities.

TOWN -- The Town of North Hempstead.

**TOWN ATTORNEY -- The Town Attorney of the Town of North Hempstead.**

TOWN BOARD -- The Town Board of the Town of North Hempstead.

TOWN CLERK -- The Town Clerk of the Town of North Hempstead.

UPLAND -- Area landward of the mean high water line as defined by the Nassau County Datum Plane.

VESSEL -- Every description of watercraft used or capable of being used as a means of transportation on water.

WATER-DEPENDENT STRUCTURE -- Any structure in, on or over the waterway, utilized primarily in connection with a water-dependent use.

WATER-DEPENDENT USE -- An activity or use requiring direct access to water which can be conducted only on, in, over or adjacent to Town waterways, which involves, as an integral part of such activity, the use of waterways, and which therefore cannot be located inland.

WATERFRONT ADVISORY COMMISSION -- An advisory committee appointed by the Town Board.  
[Added 4-1-2003 by L.L. No. 4-2003]

WATERWAY -- All waters within the geographical limits of the Town of North Hempstead or otherwise subject to its jurisdiction.

YACHT CLUB -- Any not-for-profit membership-based organization whose primary purpose is the facilitation of boating and boating-related activities by its members.

### **ARTICLE III, Regulation of Structures.**

§ 42-5. Permit requirements. [Amended 11-16-1999 by L.L. No. 13-1999; 4-1-2003 by L.L. No. 4-2003]

- A. Except as set forth in Subsection ~~BE~~ of this section, no person shall construct, maintain, erect, enlarge, install, alter, improve, remove or demolish, or cause the same to be done, any structure over, on, into or adjacent to any waterway ~~or install or maintain a mooring~~ without first filing an application with, and obtaining a permit from, the Town Clerk. No permit shall be issued, ~~except in the case of a perimeter mooring permit,~~ unless the applicant is the lawful owner of the upland immediately abutting the mean high water mark at the place where such structure is proposed to be constructed or maintained.
- ~~B. The owners/users of all private and commercial moorings, including moorings maintained by yacht clubs for use by members, guests and transient boaters, or for other commercial purposes, are required to obtain a permit from the Town Clerk.~~
- ~~C. Permits for the use of individual private moorings may be issued only to the owner of the vessel to be moored.~~
- ~~D. Damage to permitted structures.~~
  - ~~(1) In the event of damage to a permitted structure, the permit holder will not be required to obtain a new permit if:~~

- (a) ~~—The damage is less than \$5,000;~~
  - (b) ~~—The structure is to be repaired to the same specifications as described in the existing permit and said structure complies with all provisions of this chapter; or~~
  - (c) ~~—The permit holder has a valid permit issued by the Town and said structure is within the limitations of the permit.~~
- (2) ~~—If damage to a permitted structure is equal to, or exceeds, \$5,000, the permit holder is required to notify the Commissioner of Buildings in writing that the structure has been damaged and that repairs will be made. The notice shall include a statement under oath from the permit holder, certifying that the repaired structure will be of the same specifications as described in the existing permit and that it complies with all provisions of this chapter. Upon receipt of this notice, the Commissioner of Buildings shall, within five business days, make a determination as to whether the structure complies with all provisions of this chapter and poses no threat to health or safety. If the permit holder cannot comply with the conditions as set forth in this section, or if the Commissioner of Buildings determines that said conditions have not been met, then a new permit shall be required.~~

**BE.** No **structure** permit shall be required for the removal or demolition of any structure ~~or mooring~~ in waters adjacent to an upland, residential use. However, prior written notice of the intent to remove or demolish such a structure shall be given to the **Director of Harbor and Marine Enforcement** ~~Commissioner of Planning and Economic Development~~, at least 20 days prior to the start of such removal or demolition. Such notice shall include the proposed plan for demolition and for the removal and disposal of debris. The **Director of Harbor and Marine Enforcement** ~~Commissioner~~ shall have 15 days to review the proposed plan. If the **Director of Harbor and Marine Enforcement** ~~Commissioner~~ finds that the plan will result in any interference or hazard within the waterway or cause any environmental harm, the **Director of Harbor and Marine Enforcement** ~~Commissioner~~ shall notify the applicant, and no work shall be commenced until the **Director of Harbor and Marine Enforcement** ~~Commissioner~~ approves such plan. After the ~~mooring or~~ structure is removed or demolished the permit shall be surrendered to the Town Clerk.

**CF.** A permit shall expire **pursuant to § 42-14** unless, prior to its expiration, an application for renewal, together with the applicable fee, has been submitted to the Town Clerk.

**G.** ~~—Permits shall expire according to the following schedule:~~

- (1) ~~—Residential: April 1, 2000, and April 1 of each succeeding third year thereafter.~~
- (2) ~~—Multifamily residential: April 1, 2000, and April 1 of each succeeding third year thereafter.~~
- (3) ~~—Marine commercial, nonmarine commercial and yacht club: April 1, 2000, and April 1 of each succeeding third year thereafter.~~

- ~~(4) Within six months from the change of title of the upland.~~
- ~~(5) At the termination of use of the structure.~~
- ~~(6) Perimeter reconfiguration permits: April 1, 2000, and April 1 of each succeeding third year thereafter.~~
- ~~(7) Moorings: applicant may choose either a single year or a multiyear permit. All multiyear permits will expire on April 1, 2003, and on April 1 of each succeeding third year thereafter.~~
- ~~(8) Perimeter permits: April 1, 2000, and April 1 of each succeeding third year thereafter.~~

**DH.** Renewal permits shall be authorized and granted by the Town Clerk only after inspection **by the Division of Harbor and Marine Enforcement or the Building Department** in accordance with Town procedures. The Town shall furnish the applicant with a written list of any objections to the renewal of said permit. The applicant shall have a period of 30 days to remove and correct said objections after receiving written notice of the same.

**EI.** No provision of this chapter shall relieve a person from complying with the provisions of any federal, state or other applicable law.

§ 42-5.1. Perimeter **structure** reconfiguration permits ~~for structures.~~

A. Marine commercial uses and yacht clubs may apply for a perimeter **structure** reconfiguration permit which will establish an area within which the permit holder may alter the configuration of the number, width, length and location of structures **without seeking a new permit**. This shall be subject to the following limitations:

- (1) No additional boat slips may be created beyond the number which is authorized and approved in the perimeter **structure** reconfiguration permit.
- (2) No change in the function or use of the docking facility may be undertaken, including but not limited to the conversion of a floating **dock** to a fixed dock.
- (3) No excavation, dredging, bulkheading or filling shall be commenced without all local, state and federal regulatory approvals or permits.
- (4) All configurations shall remain within the perimeter shown on the permit, and there must be a minimum of a ten-foot offset from any channel or fairway for any dock perpendicular thereto or 15 feet for any dock parallel thereto.
- (5) Boats may not protrude outside of the approved perimeter.

B. The holder of a perimeter **structure** reconfiguration permit shall notify the Town Clerk, in writing, of any changes pursuant to the preceding subsection **during the term of said permit**.



- C. An application for a perimeter **structure** reconfiguration permit shall, in addition to the information required pursuant to § 42-6 hereof, include the following:
- (1) A site plan map which clearly sets forth the proposed perimeter and which details existing conditions of the in-water structures of said property and all adjacent uses on all sides of the proposed perimeter area.
  - (2) The names and addresses of all adjacent property owners.
  - (3) A statement describing the nature of planned in-water activity and the type, size and number of watercraft contained or to be contained in the perimeter **structure** reconfiguration permit area.
- D. No perimeter **structure** reconfiguration permit shall be issued by the Town Clerk until the applicant has submitted proof that the New York State Department of Environmental Conservation and the United States Army Corps of Engineers has issued a perimeter **structure** reconfiguration permit **or equivalent**, if the same is required **or letters of non-jurisdiction**. No perimeter **structure** reconfiguration permit shall be issued by the Town Clerk for an area which exceeds that approved by either of these agencies.
- E. The applicant for a perimeter structure reconfiguration permit is not required to also apply for a structure permit, however, this exemption does not relieve the applicant from paying fees for both the structure permit and a perimeter structure reconfiguration permit.**

~~§ 42-5.2. Winter storage of floats. [Added 11-16-1999 by L.L. No. 13-1999; amended 10-22-2002 by L.L. No. 15-2002; 4-1-2003 by L.L. No. 4-2003]~~

- ~~A. The owner of any swimming float for which a mooring permit has been obtained, or of any float which is part of a permitted structure under this chapter, may apply for an annual permit to store the float, apart from the structure, pursuant to this section.~~
- ~~B. Such storage will be permitted only during the period from November 1 to April 30, and only in those areas of Manhasset Bay which shall be identified from time to time by a memorandum from the Director of Harbor and Marine Enforcement to the Town Clerk.~~
- ~~C. Application for the permit must be made to the Town Clerk on a form to be promulgated by the Director of Harbor and Marine Enforcement. The application must be accompanied by:~~
- ~~(1) A description of how the float will be secured, together with a chart excerpt or survey showing the exact storage location and identifying the section, block and lot of the adjacent upland, if any, to which the float will be secured; and~~
  - ~~(2) The written consent of the owner of the upland area, if any, to which the float is to be secured.~~

- ~~D. All floats in storage must have affixed, in a conspicuous place, a lead tag identifying the owner of the float and his or her address and telephone number.~~
- ~~E. Floats in storage must be affixed securely, either with anchors on the bottom or with lines to a piling or to the adjacent upland, in such a way that they will cause no hazard to navigation or public safety. The Director of Harbor and Marine Enforcement shall make periodic inspections of floats permitted under this section and may require additional securing of floats as necessary.~~
- ~~F. The fee for a permit under this section shall be \$15.~~
- ~~G. All floats and swimming floats found in Manhasset Bay without a permit shall be deemed abandoned and shall be removed by the Director of Harbor and Marine Enforcement to a safe location if necessary. If the owner of such float can be identified, the Director of Harbor and Marine Enforcement shall give the owner or the owner's agent 21 days' notice within which the owner must either obtain a permit or remove the float from Manhasset Bay. If the owner fails to comply, the Director of Harbor and Marine Enforcement may issue a court appearance ticket. If the owner cannot be identified, or if the owner after notification fails to take the required action, the Director of Harbor and Marine Enforcement may dispose of the float. The costs of removal and disposal shall be paid by the owner, if identified.~~

§ 42-6. Application for **structure permits, perimeter structure reconfiguration permits** and renewals.  
[Amended 10-21-1997 by L.L. No. 21-1997; 4-1-2003 by L.L. No. 4-2003]

- A. Every person who shall apply for a permit or renewal permit to construct, maintain, erect, enlarge, install, alter or improve, or cause the same to be done, a structure regulated by this chapter shall file a verified application in duplicate on forms to be provided by the Town Clerk and developed by the Building Department and shall pay the fee provided for in § 42-~~15~~**13** hereof.
- (1) The application form shall require the applicant to state, at a minimum:
- (a) The applicant's name and address.
  - (b) The applicant's status as owner of the upland immediately abutting the mean high-water mark at the place where such structure is proposed to be constructed or maintained.
  - (c) The manner in which such upland is zoned.
  - (d) The exact use to which the applicant intends to put such upland after the permit is issued.
  - (e) The exact use to which the applicant intends to put such structure after the permit is issued, or present use thereof if an existing structure.
  - (f) The length and width of the proposed or existing structure.

- (g) The estimated cost of the proposed or existing structure.
  - (h) A general description of any other structures proposed to be erected or maintained on such structure.
- (2) The Town Clerk may accept copies of applications submitted to the Army Corps of Engineers and the New York State Department of Environmental Conservation to the extent such applications provide the required information.
- B. In the case of applications for structures in waterways adjacent to upland residential uses, the Town Clerk, after consultation with the Commissioner of **Building Planning**, may waive any application requirements that are deemed unnecessary for review of the application.
- C. Insurance. Each application for a permit as authorized under the provisions of this chapter, other than a **structure** residential permit **for residential uses**, shall be accompanied by proof of existing insurance, with the Town **added as an additional insured** as a named insured, evidencing protection to the public from bodily injury or property damage sustained as a result of the use of such structure. Such policy shall contain **coverage limits equal to or exceeding those limits to be set by a resolution adopted by the Town Board** of at least \$250,000/\$500,000 for bodily injury and at least \$50,000 property damage, with 30 days' notice of cancellation to be afforded to the Town Clerk.
- D. Each application for a permit as authorized under the provisions of this chapter, shall be accompanied by a sworn, notarized agreement signed by the applicant which releases the Town from any obligation to repair the structure if it is damaged by any act or omission of the Town and defends, indemnifies and holds harmless the Town from any liability arising from the structure.**
- ED.** In the case of applications for new structures in waterways adjacent to upland multifamily residential uses, marine or nonmarine commercial uses and yacht clubs, the applicant, in addition to the application required in § 42-6A, must file an environmental assessment form designated by the Commissioner of Planning, as well as any additional information required by the Building Department.
- FE.** Permits issued hereunder shall be transferable. Within six months of the transfer of title to a structure **or adjacent upland property** for which a permit has been issued, the new owner shall file a change of name with the Town Clerk. Failure to file the change of name within this period shall result in automatic termination of the permit. In the event that a change of name is not timely filed, a new permit application must be submitted **to the Town Clerk** by the new owner(s) of the upland tract adjacent to the structure.

§ 42-7. Permit procedure. [Amended 4-1-2003 by L.L. No. 4-2003]

Upon receipt of an application prepared in accordance with § 42-6 hereof, the Town Clerk shall determine if said application is complete and, if so, shall process the application according to the following procedures.

A. Residential **structure** permits.

- (1) For applications for a ~~residential-use~~ **structure** permit **for residential use**, the Town Clerk shall transfer a copy of all the application materials to the Building Department, which shall examine said application for compliance with this chapter and the laws, ordinances, regulations or specifications governing such structures. The Building Department shall approve the application if the application and the proposed structure comply with all requirements of this chapter. The Building Department's decision shall be transmitted to the Town Clerk, who shall in turn inform the applicant by mail.
- (2) Upon approval by the Building Department, the Town Clerk shall issue the original or renewal permit, provided that all requirements have been satisfied. The Building Department may impose such conditions upon the issuance of a permit which may be reasonable and necessary to carry out the purposes of this chapter, including the condition that an applicant post a bond adequate to ensure faithful performance of authorized construction. Should the Building Department disapprove the application, the Town Clerk shall not issue a permit, and the applicant may seek a permit from the Town Board pursuant to § 42-~~11~~**12**.

B. Multifamily residential, marine commercial, nonmarine commercial, yacht club **structure permits** ~~or and~~ perimeter **structure** reconfiguration permits.

- (1) For applications for a **structure** permit for multifamily residential, marine commercial, nonmarine commercial, yacht club use or for a perimeter **structure** reconfiguration permit, the Town Clerk shall transfer a copy of all application materials to the Commissioner of Buildings, who shall examine the application for compliance with this chapter and the laws, ordinances, regulations or specifications governing such structures. Upon the completion of such review, the Commissioner of Buildings shall transfer the application to the Commissioner of Planning, with a statement as to whether the application complies with the requirements of this chapter. The Commissioner of Planning shall review the application and issue an advisory report to the Town Board.
- (2) The Town Board shall schedule a public hearing on the application following receipt of the advisory report from the Commissioner of Planning, and the Town Clerk shall publish notice of the hearing in accordance with § 70-240A of the Town Code. After a public hearing is scheduled, the Commissioner of Planning shall forward a copy of the application to the Chair of the Town's ~~Ecological Commission and~~ Waterfront Advisory Commission.
- (3) Before the application is heard by the Town Board, the applicant must provide notice of the public hearing to property owners within a radius of 500 feet of the upland property affected by the application, in the manner provided for in § 70-240 of the Town Code, and must file an affidavit as to the mailing of such notices as required by that section.
- (4) The Town Board shall review the application under the standards set forth in this chapter and shall approve or disapprove the application. The Town Board may consider any recommendation and supporting information submitted by the Town's ~~Waterfront~~ Waterfront

Advisory Commission ~~and the Town Ecological Commission~~. The Town Board may impose such conditions, upon the issuance of a permit, which may be reasonable and necessary to carry out the purposes of this chapter, including the condition that an applicant post a bond adequate to ensure faithful performance of authorized construction.

(5) Upon approval by the Town Board, the Town Clerk shall issue the appropriate permit.

C. No permit shall be issued pursuant to either § 42-7A or § 42-7B until the applicant has submitted proof of the issuance of permits by the United States Army Corps of Engineers and the New York State Department of Environmental Conservation, if the same are required **or letters of non-jurisdiction**.

§ 42-8. Maintenance **or damage to permitted** ~~of~~ structures.

**A.** The permittee, who shall erect, cause to be erected or maintain any structure ~~or mooring~~ pursuant to this chapter, shall keep such structure in good repair and condition at all times so that it will not become a **hazard** ~~menace~~ to navigation, to persons using the same or to the environment and shall maintain in force the insurance required by § 42-6C. Upon finding that there is reasonable cause to believe that such permittee has failed to comply with this section, the Commissioner of Buildings may forthwith suspend any permit issued under this chapter for a period not to exceed 30 days, and after a hearing, on notice mailed to such permittee's last known address at least 10 days prior to such hearing, the Town Board may revoke such permit and order the permittee, or the owner of the upland, to repair or remove such structure in a period of time not to exceed 30 days. Such order may authorize the removal of such structure by the Town after the expiration of this period, in which case the cost of removal shall be charged to such permittee, or the owner of the upland, or both.

**B** **In the event of damage to a permitted structure, the permit holder will not be required to obtain a new permit if:**

**(1) The damage is less than \$5,000;**

**(2) The structure is to be repaired to the same specifications as described in the existing permit and said structure complies with all provisions of this chapter; or**

**(3) The permit holder has a valid permit issued by the Town and said structure is within the limitations of the permit.**

**C. If damage to a permitted structure is equal to, or exceeds, \$5,000, the permit holder is required to notify the Commissioner of Buildings and the Director of Harbor and Marine Enforcement in writing that the structure has been damaged and that repairs will be made. The notice shall include a statement under oath from the permit holder, certifying that the repaired structure will be of the same specifications as described in the existing permit and that it complies with all provisions of this chapter. Upon receipt of this notice, the Commissioner of Buildings shall, within five business days, make a determination as to whether the structure complies with all provisions of this chapter and poses no threat to**

**health or safety. If the permit holder cannot comply with the conditions as set forth in this section, or if the Commissioner of Buildings determines that said conditions have not been met, then a new permit shall be required.**

§ 42-9. Standards. [Amended 4-1-2003 by L.L. No. 4-2003]

No structure shall be constructed, erected, enlarged, installed, altered or improved unless it shall comply with the following standards:

A. General standards.

- (1) No structure shall be permitted if, in the judgment of the Commissioner of Planning, the Director of Harbor and Marine Enforcement, or the Town Board, it would unreasonably impede, obstruct or interfere with navigation, the rights of adjoining owners, the public use of or passage along the foreshore or the waterway, or harmfully affect the environment.
- (2) Except as provided under § 42-9C(1), no structure, vessel or combination thereof shall be permitted to project into the waterway a distance greater than required to reach navigable water depth, or to a length exceeding 150 feet, whichever is less.
- (3) No structure or vessels shall extend within a distance of 50 feet of any federal, state or Town ~~locally~~ designated channel, vessel accessway, fairway or anchorage, except where a legally existing marine commercial use or yacht club can establish that the existence of such structures or placement of such vessels will not impede the safety of marine traffic in the designated channel, vessel accessway, fairway or anchorage and that such structures or placement of such vessels existed in their present form as of October 1, 1991.
- (4) Notwithstanding the fact that a proposed residential structure shall not comply with this chapter in any respect, the Town Board may, in accordance with the procedures in § 42-~~11~~12, direct that such permit be issued if it shall find that compliance with this chapter in such respect will create practical difficulties or unnecessary hardships or if it shall find that the proposed structure is in the public interest.

B. Structures in waterways.

- (1) All structures shall be constructed in accordance with generally accepted engineering and design standards.
- (2) All fixed docks shall provide:
  - (a) An avenue for clear passage in the land area crossed by the dock at mean low tide. Such an avenue shall be created by providing an area below the dock with a clearance of at least six feet, by providing a means of access across the main body of the dock itself, or by providing a clearly marked path across the upland immediately adjacent to the dock, which will serve the same purpose.

- (b) A minimum of three feet and a maximum of eight feet above mean high water as defined by the Datum Plane and a maximum freeway clearance of two feet, except as provided for in § 42-9B(2)(a).
- (3) The location, design and use of any structure in the waterway shall be compatible with this chapter and with the zoning regulations of the upland jurisdiction, as well as with all other applicable public health laws and other applicable requirements, and shall conform to generally accepted standards of construction for the prevention of fire hazards.
- (4) No structure in a waterway shall be permitted unless it shall be water dependent and, except in the case of bulkheads, used solely for the purpose of gaining access to a waterway for commerce, navigation, fishing or recreation.
- (5) Any structure within a waterway utilized in connection with adjacent premises shall be the minimum necessary to meet the upland use.
- (6) With respect to residential or multifamily residential permits, no ~~structure mooring~~ or vessel slip shall be hired out or used on a seasonal or permanent basis for dockage use by persons not actually residing at the premises. Such use of a vessel slip shall constitute a violation of this chapter concurrently with any violation of the **Town's** Zoning Ordinance ~~of the Town of North Hempstead~~ also created thereby.
- (7) Except as provided under § 42-9C, there shall be no more than one dock or floating dock per lot or lot group with less than 100 feet of shoreline frontage. One additional dock or floating dock shall be allowed for each additional 100 feet of shoreline frontage. Docks and floats shall be straight, E- , F- , L- , T- or U-shaped and shall extend at right angles to the shoreline where practicable.
- (8) Except as provided under § 42-9C, the number of slips permitted shall not be greater than two per upland **single-family** residential parcel.
- (9) No slip, dock, float, vessel or combination thereof shall encroach upon the portion of the waterway adjacent to the ~~fifteen~~**15**-foot side yards on either side of the upland's boundary as it extends offshore.
- (10) Except as provided under § 42-9C, docks for all purposes are limited to a maximum width of six feet for a residential **structure** permit and 10 feet for all other permits.
- (11) The top horizontal board (wale) of any bulkhead installed pursuant to this chapter shall be at a minimum level necessary to meet the purpose for which the bulkhead is being constructed and shall in any event not be higher than six feet above mean high **water** ~~level~~ as defined in the datum plane unless a certified engineering report is submitted showing that a height in excess of six feet is required for public safety reasons. All bulkheads shall also comply with generally accepted standards of marine construction.

- (12) All structures shall be composed only of materials which, in the judgment of the Commissioner of Planning, will have no adverse effects on the environment or water quality.
- (13) Lighting on any structure must be of a type, which will not be confused with navigation lighting, must meet United States Coast Guard standards and must not produce offensive glare when viewed from land or water.
- (14) All fixed structures protruding from the mean high water ~~high water line~~ to the mean low water lines ~~tide~~ shall provide for an alternate route of travel along the shoreline over or around said structure.

C. Additional provisions for structures adjacent to multifamily residential, marine commercial, nonmarine commercial and yacht club uses.

- (1) The Town Board may permit a specific number, configuration, width and length of docks, floats or slips other than what would be allowed under § 42-9B, where the applicant can demonstrate that the proposed design or additional number of docks, floats or slips is needed to accommodate the associated use.
- (2) The permissible number, configuration and width of docks, floats and slips shall be determined by considering the location, limiting natural features of the site, demonstrated need for such structures, effect on navigation, infringement on public lands and compliance with the other sections of this chapter. No structure, vessel or combination thereof shall unreasonably impede the public's use, benefit or enjoyment of publicly owned shorefront and underwater lands. Where, in the judgment of the Town Board, impairment of the public's use and enjoyment of such publicly owned areas cannot be avoided, the upland owner may be required to afford to the public a reasonable and convenient means of access over or around the structure.
- (3) Any new docking facilities, slips or moorings, or expansion or increase in existing docking facilities, slips or moorings, for marine commercial, multifamily ~~multiple~~ residential and yacht club uses shall be required to:
  - (a) Demonstrate that sufficient marine sanitation pumpout capacity exists or that a satisfactory alternative approved by the Town Board is available, so as to accomplish the removal of sanitary wastes from all vessels associated with the use; and
  - (b) Provide for the collection and proper disposal of solid waste (garbage, trash, etc.), grease, oil and gasoline.
- (4) In areas adjacent to multifamily ~~multiple~~ residential or nonmarine commercial uses, in no case shall more than one dock be permitted per 100 feet of shoreline frontage. ~~For multiple residential uses, in no case shall there be more than two boat slips or moorings per residential unit.~~



- (5) Any use permitted to dispense gasoline, diesel fuel, mixed fuels, engine oils and similar supplies shall show compliance with all federal and state laws dealing with oil spill prevention.
- (6) In addition to the requirements specified under this section, the following shall apply for docks, floats or slips adjacent to nonmarine commercial uses:
  - (a) The docks or slips are limited to short-term transient use (no more than 48 hours) and shall be designated as the same, except for vessels owned by the adjacent upland owner.
  - (b) The area associated with the dock or slip may be used only as a means of vessel access to the upland use or for public access. The area shall not be used for any activity or use which is not water dependent.

§ 42-10. Existing permits; existing structures.

- A. Notwithstanding any other provisions to the contrary, holders of valid permits issued by the Town Clerk for structures in a waterway as of the effective date of this chapter shall be permitted to maintain these structures, provided that the structure is not enlarged or altered beyond the scope of the existing permit or in a condition that endangers the environment or the public's health, safety or welfare. The permit holder shall be entitled to renew the permit in accordance with § 42-5CF, subject to an inspection authorized by the Director of Harbor and Marine Enforcement or the Commissioner of Building ~~Building Commissioner~~ under § 42-5DG.
- B. All residential, multifamily residential, marine commercial, nonmarine commercial or yacht club structures or uses in existence on the effective date of this chapter, but without valid permits from the Town Clerk, must be covered by a permit application within 12 months of the effective date of this chapter, or shall be considered in violation of the provisions of this chapter and shall be removed forthwith. The fines as provided for in § 42-19~~14~~6 will begin to accrue at the expiration of this twelve-month grace period.

**ARTICLE IV, Review of denials of residential structure permits.**

**§ 42-11. Review of denials of residential structure permits.**

- A. The Town Board may review any determination of the Building Department disapproving an application pursuant to § 42-7A. A majority vote of the members shall be necessary to reverse or modify the determination of the Building Department. The Town Board may consider any recommendation and supporting information submitted by the Town's Waterfront Advisory Commission during the public comment period.**
- B. Such review must be requested by the applicant within 30 days of its receipt of notification of the disapproval by the Building Department, on a form to be supplied by the Town Clerk.**

- C. The Town Board shall hold a hearing on the review of the determination, and public notice thereof shall be given by publication in the official newspaper at least 10 but no more than 20 days prior to such hearing. The applicant shall be required to send notice by certified mail to owners of all property within a radius of 500 feet of the upland property, at least 10 days prior to the hearing, advising of the application and the hearing date, and must file with the Town Attorney, prior to the hearing date, an affidavit of mailing of the notice as required by this section. After the hearing is scheduled, the Commissioner of Planning shall forward a copy of the application to the Chair of the Town's Waterfront Advisory Commission.
- D. If the record shall indicate to the satisfaction of the Town Board that strict application of the provisions of this chapter is not necessary to maintain safe navigability of the waterway or to prevent undue interference with the right of the public to use the waterfront or the littoral rights of adjacent waterfront property owners, taking into account the shape and contour of the waterway and topography of the vicinity, and if the record further indicates that the proposed development conforms to all other local, state and federal regulations relating thereto, then the Town Board may vary or modify the application of such provisions so that the spirit of this chapter shall be observed.
- E. Upon the Town Board's reversal or modification of a determination by the Building Department, the Town Clerk shall issue the appropriate permit.

#### ARTICLE V, Regulation of Moorings.

§ 42-~~12~~44. Moorings. [Amended 4-28-1998 by L.L. No. 9-1998; 11-16-1999 by L.L. No. 13-1999; 4-1-2003 by L.L. No. 4-2003]

Notwithstanding any other provision in this chapter to the contrary, the following rules shall govern the permitting of all moorings:

- A. General provisions.
- (1) No person shall place or use any mooring or permanent anchorage facility in the waterways of the Town, without obtaining a permit under this chapter from the Town Clerk and paying the required permit fee. Swimming floats that are secured to the underwater land by a mooring shall require a mooring permit.
  - (2) Applicants for mooring permits shall file a permit application with the Town Clerk.
    - (a) All applications shall include, at a minimum:
      - [1] The applicant's name and address.
      - [2] The location of said mooring, by latitude and longitude, except that moorings installed by the holder of an approved perimeter mooring permit

and located within the area encompassing the of perimeter mooring permit may be identified solely by reference to the perimeter mooring permit.

- [3] The applicant's status as owner of the upland adjacent to the waters in which the mooring is to be placed.
  - [4] The manner in which such upland is zoned.
  - [5] The name, type, length and registration number, if any, of the vessel to be moored and the ownership of the vessel.
  - [6] A description of the type of mooring to be used.
- (b) The Town Clerk shall forward all completed permit applications to the Director of Harbor and Marine Enforcement for review.
- (3) All moorings shall be placed and maintained in accordance with federal, state and Town procedures.
  - (4) The Director ~~of~~ Harbor and Marine Enforcement, ~~in conjunction with the Commissioner of Planning,~~ shall establish minimum mooring tackle guidelines. **Moorings maintained for commercial purposes must also adhere to the requirements of the U.S. Coast Guard as defined by the Code of Federal Regulations.** ~~All mooring tackle shall be subject to periodic inspection in accordance with § 42-5H.~~
  - (5) Upon the expiration of a permit, any mooring and all mooring tackle shall be removed by the owner.
  - (6) Any mooring or mooring tackle which has not been removed within 30 days of expiration of a permit may be removed by the Town. Any costs incurred by the Town in the removal of the mooring or mooring tackle may be charged to the permit holder or registrant, and additional fines may be imposed as provided in § 42-~~19~~**16** of this chapter.
  - (7) Under the provisions of § 42-~~17~~**14**, the **Town Clerk** ~~Director of Harbor and Marine Enforcement~~ may suspend any mooring permit which is being used in violation of this section. Upon suspension, the owner may appeal to the Town Clerk for reinstatement of the permit under the provisions of § 42-~~17~~**14**.
  - (8) All moorings shall be inspected on a schedule to be created by the Director of Harbor and Marine Enforcement **by a mooring inspector who shall be licensed by the Town in accordance with § 42-16.** ~~Moorings inspectors shall be licensed by the Town in accordance with procedures to be developed by the Director of Harbor and Marine Enforcement, with recommendations from the Waterfront Advisory Commission. The Director of Harbor and Marine Enforcement shall create such procedures and shall update them as necessary. Moorings maintained for commercial purposes must also adhere to the requirements of the U.S. Coast Guard.~~

B. Residential mooring permits.

- (1) The Town Clerk may grant up to two mooring permits per legal dwelling unit which is immediately adjacent to the shoreline, provided that the applicant is also the legal owner or lessee of a seaworthy vessel which will use the mooring during the permit period.
- (2) Each application for a mooring permit under this subsection must include a copy of the registration of the vessel which is to be secured to the mooring or, in the case of boats which do not, under state and federal regulations, require registrations, must include a description of the boat and a notarized statement of the owner swearing ownership of the vessel.
- (3) All moorings and accompanying vessels must display matching markings as may be required by the Town Clerk, the form of such markings to be developed by the Director of Harbor and Marine Enforcement. The Town's Waterfront Advisory Commission may recommend to the Director of Harbor and Marine Enforcement the type of marking which is to be used.
- (4) No moorings which receive a permit in accordance with this section may be leased, sold, rented, swapped or in any way utilized by anyone other than the permit holder.

C. Perimeter **mooring** permits. Marine commercial, nonmarine commercial, multifamily residential and yacht clubs which have property along a bay or harbor in **the Town North Hempstead** must apply for perimeter **mooring** permits, which will establish a **perimeter zone** within which a fixed number of moorings may be placed. Multifamily residential associations with less than five moorings are exempt from this requirement.

- (1) Applications for perimeter **mooring** permits may be obtained from the Town Clerk. Said applications shall include, at a minimum, the following information:
  - (a) The name and address and, in the case of corporations, associations, clubs or the like, the name and address of a contact person.
  - (b) A description of the applicant's business, commercial or recreational purpose(s), including the number of members if a yacht club and the services provided if a marine commercial or nonmarine commercial use.
  - (c) A description of any upland parcel utilized in connection with the mooring **perimeter zone**, including proof of compliance with all applicable parking regulations and requirements of the jurisdiction governing the upland parcel.
  - (d) A description of how access to moored vessels will be provided.
  - (e) A statement of how compliance with all applicable pumpout and trash disposal requirements will be maintained.

- (f) A map, drawn to scale, showing the proposed mooring perimeter ~~zone~~, the number of moorings, and the area within a five-hundred-foot radius of the perimeter ~~zone~~.
  - (g) The type of mooring and mooring tackle to be used.
  - (h) The ownership of the upland immediately adjacent to the mooring perimeter ~~zone~~.
- (2) Standards.
- (a) All mooring perimeters ~~zone~~ must be designed to allow vessels to enter and exit safely. There must also be appropriate distance between moorings to keep moored vessels from colliding, said distance to be dependent on accepted standards for the type of mooring equipment installed.
  - (b) All moorings within a perimeter ~~zone~~ must bear an easily identifiable mark as approved by the Director of Harbor and Marine Enforcement.
  - (c) All mooring perimeters ~~zone~~ shall be located so as not to interfere with the free flow of vessels to and from designated boat launching areas.
  - (d) No mooring perimeter ~~zone~~ may be established within a designated channel, fairway or seaplane landing area. **No vessel moored in a perimeter may protrude into an adjacent channel, fairway or seaplane landing area.**
  - (e) Each mooring perimeter ~~zone~~ shall have a maximum number of moorings which may be placed within it. While fewer than the approved number of moorings may be placed, at no time may the maximum be exceeded.
  - (f) All moorings which are part of a perimeter mooring permit issued to a yacht club may be used only by members of said club and may not be leased, traded, swapped, loaned or in any way utilized by nonmembers except for members of adjoining yacht clubs. However, each club may set aside up to 10 moorings, as guest moorings, to be utilized by visiting vessels for a period not to exceed 10 days in any consecutive thirty-day period within the mooring field. The application for the perimeter mooring permit must indicate how many guest moorings will be established, if any. These moorings shall be visibly marked in accordance with standards to be established by the Director of Harbor and Marine Enforcement.
  - (g) No yacht club may request more moorings within its perimeter mooring permit than a number equal to the number of vessels owned by the club's members, plus the number of vessels registered in the name of the club for the exclusive use of itself and its members, plus up to 10 guest moorings. No multifamily residential use may request more moorings within its perimeter than a number equal to the number of vessels owned by its residents, and in no case more than the number of residential units. A multifamily residential use may, however, enter into a written

agreement with an adjoining multifamily residential use or with any multifamily residential use within 500 feet, allocating between themselves the total number of moorings to which both are entitled under the preceding sentence.

- (h) Perimeter **mooring** permits issued to marine commercial and nonmarine commercial entities shall be limited to a **perimeter zone** immediately adjacent to the upland, unless approval from neighboring landowners is granted allowing for a mooring **perimeter zone** to be established off their property.
  - (i) The holders of perimeter **mooring** permits shall record the location and names, length, draft, beam and type of all vessels moored in its **perimeter area**. The position of each mooring shall be noted upon a map or chart, which shall be available for inspection at all times by the Town. Said chart shall be updated as often as necessary to maintain its accuracy.
  - (j) The holders of perimeter **mooring** permits shall keep on record with the Town Clerk the name, address and phone number of both a primary and secondary contact person. The Town Clerk's office **and the Director of Harbor and Marine Enforcement** must be notified within 14 days when either contact person is changed.
  - (k) Holders of perimeter **mooring** permits shall, along with the appropriate fee, annually update plans with the Town Clerk, indicating any change in the number of moorings requested for their perimeter. Permit holders may also request changes during the season, **with the approval of the Director of Harbor and Marine Enforcement and** filing the appropriate forms along with the appropriate fees.
- (3) Examination of application.
- (a) The Town Clerk shall transfer a copy of all application materials to the Director of Harbor and Marine Enforcement, who shall examine the application for compliance with this chapter and all other applicable laws, ordinances, regulations or specifications governing moorings. If the Town has adopted a mooring plan under the provisions of this section, the **Director of Harbor and Marine Enforcement** ~~Commissioner of Buildings~~ shall also review whether or not the application conforms to such plan.
  - (b) **After reviewing the application, the Director of Harbor and Marine Enforcement shall issue an advisory report to the Town Board** ~~Upon completion of the review by the Director of Harbor and Marine Enforcement, and~~ **shall transfer said** such application ~~shall be transferred~~ **and advisory report** to the Commissioner of Planning, ~~with a statement as to whether the application complies with the requirements of this chapter.~~ The Commissioner of Planning shall review the application and issue an advisory report to the Town Board.

- (4) Except in the case described in the following sentence, the Town Board shall schedule a public hearing on the application following receipt of the advisory report from the Commissioner of Planning **and the Director of Harbor and Marine Enforcement**, and the Town Clerk shall publish notice of the hearing in accordance with § 70-240A of the Town Code. In the case of an application for a perimeter **mooring** permit sought by an applicant whose perimeter is already identified specifically in a mooring plan approved under Subsection D of this section, a public hearing shall not be required, and the Town Board may **authorize issuance of** ~~adopt~~ the perimeter **mooring** permit by ordinary resolution.
- (5) The Town Board shall review the application under the standards set forth in this chapter and shall approve or disapprove the application. The Town Board may consider any recommendation and supporting information submitted by the Town's Waterfront Advisory Commission ~~and the Town Ecological Commission~~. The Town Board may impose such conditions upon the issuance of a permit which may be reasonable and necessary to carry out the purposes of this chapter, including the condition that an applicant post a bond adequate to ensure faithful performance of authorized **mooring installation** ~~construction~~. No permit may be issued to an applicant who is in violation of any of the provisions of this chapter.
- (6) Upon approval by the Town Board, the Town Clerk shall issue the appropriate permit.

D. Mooring plan. The Town may adopt a mooring plan setting aside designated areas for the mooring of vessels in the waterways within its boundaries. Such a plan may be adopted by the Town Board at a public hearing, after preparation and review of said plan by the appropriate departments of the Town in consultation with the Waterfront Advisory Commission. All **mooring** permits, whether perimeter or residential, must comply with such a plan if one is adopted.

E. Special permits. The Town Board may authorize a special mooring permit after a public hearing.

~~§ 42-12. Review of denials of residential permits. [Amended 4-1-2003 by L.L. No. 4-2003]~~

- A. ~~The Town Board may review any determination of the Director of Harbor and Marine Enforcement disapproving an application pursuant to § 42-7A. A majority vote of the members shall be necessary to reverse or modify the determination of the Director of Harbor and Marine Enforcement. The Town Board may consider any recommendation and supporting information submitted by the Town Waterfront Advisory Commission and the Town Ecological Commission during the public comment period.~~
- B. ~~Such review must be requested by the applicant within 30 days of its receipt of notification of the disapproval by the Director of Harbor and Marine Enforcement, on a form to be supplied by the Commissioner of Planning.~~
- C. ~~The Town Board shall hold a hearing on the review of the determination, and public notice thereof shall be given by publication in the official newspaper at least 10 but no more than 20 days prior to such hearing. The applicant shall be required to send notice by certified mail to owners of all~~

property within a radius of 500 feet of the upland property, at least 10 days prior to the hearing, advising of the application and the hearing date, and must file with the Town Attorney, prior to the hearing date, an affidavit of mailing of the notice as required by this section. After the hearing is scheduled, the Commissioner of Planning shall forward a copy of the application to the Chair of the Town's Ecological Commission and Waterfront Advisory Commission.

- D. ~~If the record shall indicate to the satisfaction of the Town Board that strict application of the provisions of this chapter is not necessary to maintain safe navigability of the waterway or to prevent undue interference with the right of the public to use the waterfront or the littoral rights of adjacent waterfront property owners, taking into account the shape and contour of the waterway and topography of the vicinity, and if the record further indicates that the proposed development conforms to all other local, state and federal regulations relating thereto, then the Town Board may vary or modify the application of such provisions so that the spirit of this chapter shall be observed.~~

## **ARTICLE VI, Winter storage of floats.**

### **§ 42-13. Winter storage of floats.**

- A. The owner of any swimming float for which a mooring permit has been obtained, or of any float which is part of a permitted structure under this chapter, may apply for an annual permit to store the swimming float or float, apart from the structure, pursuant to this section.
- B. Such storage will be permitted only during the period from November 1 to April 30, and only in those areas of Manhasset Bay which shall be identified from time to time by a memorandum from the Director of Harbor and Marine Enforcement to the Town Clerk.
- C. Application for the permit must be made to the Town Clerk on a form to be promulgated by the Director of Harbor and Marine Enforcement. The application must be accompanied by:
- (1) A description of how the float or swimming float will be secured, together with a chart excerpt or survey showing the exact storage location and identifying the section, block and lot of the adjacent upland, if any, to which the float or swimming float will be secured.
- D. All floats and swimming floats in storage must have affixed, in a conspicuous place, a sign or tag made of durable material and identifying the owner of the float or swimming float and his or her address and telephone number.
- E. Floats or swimming floats in storage must be affixed securely, either with anchors on the bottom or with lines to a piling or to the adjacent upland, in such a way that they will cause no hazard to navigation or public safety. The Director of Harbor and Marine Enforcement shall make periodic inspections of either type of floats permitted under this section and may require additional securing of these floats as necessary.



**F. The fee for a permit under this section shall be \$15.**

**G. Unless otherwise authorized by the Director of Harbor and Marine Enforcement all top surfaces of floats or swimming floats in storage areas on the waterway shall be free of all items except for gangways or other items as otherwise permitted in this chapter.**

**H. All floats and swimming floats found in the waterways without a permit shall be deemed abandoned and may be removed by the Director of Harbor and Marine Enforcement to a safe location if necessary. If the owner of such float can be identified, the Director of Harbor and Marine Enforcement shall give the owner or the owner's agent 21 days' notice within which the owner must either obtain a permit or remove the float from the waterway. If the owner fails to comply, the Director of Harbor and Marine Enforcement may issue a court appearance ticket. If the owner cannot be identified, or if the owner after notification fails to take the required action, the Director of Harbor and Marine Enforcement may dispose of the float. The costs of removal and disposal shall be paid by the owner, if identified.**

## **ARTICLE VII, Permit expiration**

### **§ 42-14. Permit Expiration.**

**A. Permits shall expire according to the following schedule:**

**(1) Residential structure permits: April 1, 2000, and April 1 of each succeeding third year thereafter.**

**(2) Multifamily residential structure permits: April 1, 2000, and April 1 of each succeeding third year thereafter.**

**(3) Marine commercial, nonmarine commercial and yacht club structure permits: April 1, 2000, and April 1 of each succeeding third year thereafter.**

**(4) Within six months from the change of title of the upland.**

**(5) At the termination of use of the structure.**

**(6) Perimeter structure reconfiguration permits: April 1, 2000, and April 1 of each succeeding third year thereafter.**

**(7) Moorings: applicant may choose either a single-year or a three-year permit. All three-year permits will expire on April 1, 2003, and on April 1 of each succeeding third year thereafter.**

**(8) Perimeter mooring permits: April 1, 2000, and April 1 of each succeeding third year thereafter.**

**B. In the event that the Town adopts a mooring plan pursuant to 42-12(D), all mooring permits shall terminate on the date of termination of the mooring plan. If a three-year permit is issued after the adoption of the mooring plan, the term of that permit shall be reduced to a term of less than three years.**

**ARTICLE VIII, Fees.**

§ 42-~~15~~13. Fees. [Amended 11-16-1999 by L.L. No. 13-1999; 4-1-2003 by L.L. No. 4-2003]

The fees for filing an application for a permit **or license** under this chapter shall be **set by a resolution adopted by the Town Board.** as follows:

- A. ~~Initial application for permission to construct, maintain, erect, enlarge, install, alter or improve a structure which either is or is to be adjacent to a single residential use, subject to the provisions hereof: \$200.~~
- B. ~~Initial application for permission to construct, maintain, erect, enlarge, install, alter or improve a structure which either is or is to be adjacent to a multiresidential use or nonmarine commercial use, subject to the provisions hereof: \$400.~~
- C. ~~Initial application for permission to construct, maintain, erect, enlarge, install, alter, improve, remove or demolish a structure which either is or is to be adjacent to a yacht club use, subject to the provisions hereof: \$500.~~
- D. ~~Initial application for permission to construct, maintain, erect, enlarge, install, alter, improve, remove or demolish a structure which either is or is to be adjacent to a marine commercial use, subject to the provisions hereof:~~
  - (1) ~~For a marine commercial facility with 100 or fewer boats: \$500.~~
  - (2) ~~For a marine commercial facility with 101 to 200 boats: \$1,000.~~
  - (3) ~~For a marine commercial facility with 201 to 300 boats: \$1,500.~~
  - (4) ~~For a marine commercial facility with 301 to 400 boats: \$2,500.~~
  - (5) ~~For a marine commercial facility with 401 or more boats: \$3,000.~~
- E. ~~Initial application for a mooring field perimeter permit, subject to the provisions hereof:~~
  - (1) ~~For a multifamily residential use: \$100.~~
  - (2) ~~For a yacht club use: \$200.~~
  - (3) ~~For marine commercial and nonmarine commercial uses: \$300.~~

- ~~F. For a multiyear (three year) mooring permit: \$150. Initial application for permission to install a single year mooring: \$60.~~
- ~~G. Initial application for a perimeter reconfiguration permit to be issued to a yacht club: \$500, plus the fee required pursuant to § 42-13C hereof.~~
- ~~H. Initial application for a perimeter reconfiguration permit to be issued to a marine commercial use: \$500, plus the fee required pursuant to § 42-13D hereof.~~
- ~~I. Renewal permits for a structure adjacent to a residential use subject to the provisions hereof: \$200.~~
- ~~J. Renewal permits for a structure adjacent to a multifamily residential or nonmarine commercial use: \$400.~~
- ~~K. Renewal permits for a structure adjacent to a yacht club use: \$500.~~
- ~~L. Renewal application for permission to construct, maintain, erect, enlarge, install, alter, improve, remove or demolish a structure which either is or is to be adjacent to a marine commercial use, subject to the provisions hereof:~~
- ~~(1) For a marine commercial facility with 100 or fewer boats: \$500.~~
- ~~(2) For a marine commercial facility with 101 to 200 boats: \$1,000.~~
- ~~(3) For a marine commercial facility with 201 to 300 boats: \$1,500.~~
- ~~(4) For a marine commercial facility with 301 to 400 boats: \$2,500.~~
- ~~(5) For a marine commercial facility with 401 or more boats: \$3,000.~~
- ~~M. Renewal application for a mooring field perimeter permit, subject to the provisions hereof:~~
- ~~(1) For a multifamily residential use: \$100.~~
- ~~(2) For a yacht club use: \$200.~~
- ~~(3) For marine commercial and nonmarine commercial use: \$300.~~
- ~~N. Renewal permits for single year moorings subject to the provisions hereof: \$60.~~
- ~~O. Renewal application for a perimeter reconfiguration permit to be issued to a yacht club: \$500, plus the fee required in § 42-13K hereof.~~
- ~~P. Renewal application for a perimeter reconfiguration permit to be issued for a marine commercial use: \$500, plus the fee required in § 42-13L hereof.~~

- ~~Q. Costs incurred by the Town for expert consultation or review or for other extraordinary expenses incurred by the Town in connection with review of the application, shall be charged to the applicant, not to exceed \$5,000.~~
- ~~R. Mooring license inspectors shall pay an initial registration fee of \$250 upon approval of their license application by the Director of Harbor and Marine Enforcement and shall pay annual renewal fees of \$100.~~
- ~~S. Whenever a structure is maintained, erected, enlarged, installed, altered or improved or a mooring installed or maintained, prior to the issuance of a valid permit, the fee for such permit shall be three times the amount otherwise provided for in this section.~~

§ 42-~~15.1~~<sup>13.1</sup>. Required allocations.

- A. Commencing with the first Town budget adopted after the effective date of this chapter, the Town budget will include a separate line item for revenues received under § 42-~~15~~<sup>13</sup> of this chapter.
- B. All such revenues shall be allocated to effectuate the legislative purpose established in § 42-2 of this chapter. In no event shall Town expenditures for such purposes be less than the total revenue so raised.

**ARTICLE IX, Mooring Inspectors.**

**§ 42-16. Application.**

**Notwithstanding any other provision in this chapter to the contrary, the following rules shall govern the licensing of mooring inspectors:**

**A. General provisions.**

- (1) Applicants for a mooring inspector license shall pay a fee pursuant to § 42-15 and file a license application with the Town Clerk, which shall include, at a minimum:**
- (a) The applicant's name, home address, home telephone number, business name, business address and business telephone number.**
- (b) The qualifications, experience and training of the applicant in inspecting moorings or other similar activities.**
- (c) The name, type, length and registration number of the applicant's vessel to be used to inspect moorings.**
- (d) Proof of insurance coverage with the Town added as an additional insured, evidencing protection to the public from bodily injury or property damage sustained as a result of acts or omissions by the mooring inspector. Such policy shall contain coverage equal to or exceeding those limits to be set by a**

resolution adopted by the Town Board, with 30 days' notice of cancellation to be afforded to the Town Clerk. The insurance coverage must be effective for all parts of the waterway and in no way shall limit its coverage to a particular location or area of the waterway.

(e) Proof of Workers' Compensation insurance inclusive of an endorsement for coverage afforded under the United States Longshore & Harbor Workers' Act or proof of the same not being required. The Town shall be provided with 30 days' notice of cancellation of such policy.

(f) A sworn, notarized statement signed by the applicant which states that:

[1] The information in the application is true.

[2] The applicant will adhere to all requirements of this chapter and the standards and procedure for moorings in accordance with federal, state and Town laws and regulations.

[3] The applicant will maintain adequate insurance during the term of the license.

[4] The applicant will update the Town Clerk as to any changes to the information in the application.

(2) The Town Clerk shall forward all completed license applications to the Director of Harbor and Marine Enforcement to review the application to determine whether the applicant is qualified and fit to inspect moorings pursuant to this chapter and shall transmit the decision to the Town Clerk who shall issue the license, provided that all requirements have been satisfied.

(3) Every mooring inspector license issued under this section shall be issued as of the first day of April or subsequent date of issue and shall expire on the 31st day of March next succeeding unless sooner revoked by the Town Clerk.

#### ARTICLE X, Suspension and revocation of permits or licenses.

§ 42-~~17~~44. Suspension and revocation of permits or licenses.

A. The Town Clerk shall have the authority to revoke permits or licenses issued pursuant to this chapter in the following instances:

(1) Where the Town Clerk determines that there has been any false statement or material misrepresentation contained in any part of the application upon which the permit or license was based; or

- (2) Where the Town Clerk determines that the permit **or license** was issued in error and should not have been issued in accordance with the requirements of this chapter or other applicable law.

B. The Town Clerk shall have the authority to suspend a permit **issued pursuant to this chapter** where the Town determines that the work being done is not being performed in accordance with the provisions of the application, plan(s), survey(s), terms or conditions of the permit.

- (1) A permit suspended by the Town Clerk may remain suspended for such period of time that the Town Clerk deems reasonable up to and including 90 days. In the Town Clerk's discretion, the suspension of the permit may be extended for an additional ninety-day period. During the period that the permit is suspended, the holder thereof shall lawfully undertake all measures necessary to conform to and comply with the terms and conditions of the permit.
- (2) If, during the suspension period, the Town Clerk determines that the work performed remains not in compliance with the terms of the permit, he shall revoke the permit.

**C. The Town Clerk shall have the authority to suspend a license issued pursuant to this chapter where the Town determines that the mooring inspector is not adhering to the requirements of this chapter or the standards and procedures for moorings.**

- (1) A license suspended by the Town Clerk may remain suspended for such period of time that the Town Clerk deems reasonable up to and including 90 days. In the Town Clerk's discretion, the suspension of the permit may be extended for an additional 90-day period.**
- (2) If, during the suspension period, the Town Clerk determines that the inspector will continue to not adhere to the requirements of this chapter or the standards and procedures for moorings, the Town Clerk shall revoke the license.**

**DC.** A written notice of suspension and a written notice of revocation of a permit **or license** shall be served upon the holder of the permit **or license** and, **in the case of a permit**, the owner, occupant or person in control of the premises covered by the permit. Said notice shall be served personally or by certified mail, return receipt requested, and, **in the case of a permit**, an addressed copy of the notice shall be posted on the premises covered by the permit, if practicable.

**ARTICLE XI, Enforcement; Penalties for offenses; Navigational aids; Intermunicipal Agreements; Severability; Disclaimer.**

§ 42-~~18~~15. Enforcement. [Amended 2-10-1998 by L.L. No. 5-1998; 10-22-2002 by L.L. No. 15-2002]

The Director of Harbor and Marine Enforcement, working with such other officials as designated by the Town Board, shall be responsible for and shall supervise the enforcement of the provisions of this chapter. As provided for in Chapter 4 of the Town Code, such personnel shall be authorized to issue appearance tickets for offenses under this chapter.

§ 42-~~19~~16. Penalties for offenses.

- A. The violation of any provision of this chapter shall be punishable by a fine of not less than \$250 nor more than \$1,000 for a first offense; by a fine of not less than \$500 nor more than \$2,500 for the second of two offenses, both of which were committed within a period of one year; and by a fine of not less than \$1,000 nor more than \$5,000 for the third of a series of offenses, all of which were committed within a period of three years. Each day's continued violation shall be a separate additional violation of this chapter.
- B. In the event that any structure is erected, maintained or used in violation of this chapter, in addition to other remedies provided by law, any appropriate action or proceeding may be taken by the Town to prevent such unlawful erection, maintenance or use, to restrain, correct or abate such violation, to prevent the use of said structure or to prevent any illegal act, conduct or use in connection with such structure and to compel compliance with the provisions of this chapter.

**§ 42-20. Navigational aids.**

**A. It shall be unlawful and a violation of this section and an offense within the meaning of the Penal Law of the State of New York for any person without written permission from the Director of Harbor and Marine Enforcement or from the United States Coast Guard:**

**(1) To move, moor to, deface or remove any navigation marker buoy or Town informational sign in the waterways.**

**(2) To moor to, trespass, deface, or cause damage or harm to a lighthouse or its surrounding property.**

**B. Notwithstanding the provisions of § 42-19 of this chapter, any person committing a violation of this section shall be punished:**

**(1) By a fine of \$1,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.**

**(2) By a fine of \$2,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the second of two offenses, both of which were committed within a period of five years.**

**(3) By a fine of \$5,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the third or subsequent offense of a series of offenses, all of which were committed within a period of five years.**

§ 42-~~21~~17. Agreements with other municipalities.

The Town Supervisor may, upon approval of the Town Board, after a public hearing, execute an agreement with other municipal corporations to effectuate the purposes of this chapter. Such agreements may deviate from the specifics of this chapter, provided that the legislative purpose of this chapter is met.

§ 42-~~22~~<sup>18</sup>. Severability.

The provisions of this chapter are hereby declared to be severable, and, if any section, sentence, clause or phrase thereof shall for any reason be held to be invalid, ineffective, in conflict with regulations of the federal or state authorities, or to be unconstitutional, such decision shall not affect the validity of the remaining portions hereof, but such remaining portions shall continue in full force and effect.

§ 42-~~23~~<sup>19</sup>. Disclaimer.

No permit or certificate issued pursuant to this chapter shall be deemed as a representation of the integrity, safety or engineering and design of any structure, and no one shall place reliance on any permit, certificate or representation of the Town concerning any aspect of such structure.

~~§ 42-20. Navigation buoys. [Added 6-10-1997 by L.L. No. 10-1997]~~

~~A. It shall be unlawful and a violation of this section and an offense within the meaning of the Penal Law of the State of New York for any person without written permission from the Town Director of Harbor and Marine Enforcement or from the United States Coast Guard to move, moor to, deface or remove any navigation marker buoy or Town informational sign in Manhasset Bay. [Amended 6-29-2010 by L.L. No. 8-2010]~~

~~B. Notwithstanding the provisions of § 42-16 of this chapter, any person committing a violation of this section shall be punished:~~

- ~~(1) By a fine of \$1,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.~~
- ~~(2) By a fine of \$2,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the second of two offenses, both of which were committed within a period of five years.~~
- ~~(3) By a fine of \$5,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the third or subsequent offense of a series of offenses, all of which were committed within a period of five years.~~

Section 3.

Chapter 23 of the Town Code is hereby amended as follows:

ARTICLE XI, Department of Public Safety [Added 12-16-1997 by L.L. No. 27-1997]

§ 23-11. (Reserved)

§ 23-11.1. Definitions.



- A. Whenever used in this article, words used in the singular include the plural and vice versa, and pronouns used in the masculine gender also include the feminine.
- B. As used in this article, the following terms shall have the meanings indicated:

COMMISSIONER -- The duly qualified and appointed Commissioner of the Department of Public Safety.

§ 23-11.2. Department established; Commissioner.

- A. There is hereby established in the Town of North Hempstead a Department of Public Safety.
- B. The chief executive officer and administrative head of such Department shall be the Commissioner, who shall be appointed by the Town Board for the term fixed by law and at such salary as may be fixed by the Town Board. The Commissioner shall be appointed on the basis of his administrative and practical experience and education, as well as such additional standards as may be required by law or the Town Board. The Commissioner shall be the head of the Department with power and authority to appoint and remove officers and employees under his jurisdiction in accordance with Civil Service Law and other applicable laws. He may appoint one Deputy, who may act generally for the Commissioner in the absence of the Commissioner, and one Assistant. [Amended 9-1-1998 by L.L. No. 15-1998]
- C. Before entering upon the duties of office, the Commissioner shall execute and file with the Town Clerk an official undertaking, if the same is required by the Town Board, in such sum as is prescribed by the Town Board and in such form as is approved by the Town Attorney.

§ 23-11.3. Departmental organization. [Added 2-10-1998 by L.L. No. 4-1998; amended 10-22-2002 by L.L. No. 15-2002]

The Department of Public Safety shall comprise the following Divisions:

- A. Division of Parking Enforcement.
- B. Division of Code Enforcement.
- C. Division of the Animal Shelter.
- D. Division of Harbor and Marine Enforcement. [Added 6-8-2010 by L.L. No. 6-2010]
- E. Division of Security.

§ 23-11.4. Powers and duties. [Added 2-10-1998 by L.L. No. 4-1998; amended 8-29-2000 by L.L. No. 11-2000; 10-22-2002 by L.L. No. 15-2002]

- A. The Division of Parking Enforcement shall:

- (1) Enforce parking ordinances and regulations in all Town facilities and in parking fields, shopping centers, streets, and public parking districts in the unincorporated areas of North Hempstead.
  - (2) Undertake occasional patrols of the unincorporated parts of North Hempstead, at any hour of the day, in order to investigate complaints and deter illicit activities, such as, but not limited to, vandalism and illegal dumping on public or private property.
  - (3) Respond to emergencies in coordination with other law enforcement and municipal authorities, including, but not limited to, other Town personnel and the Nassau County Police Department.
- B. The Division of the Animal Shelter shall have the power, duty and responsibility to administer and do any and all things necessary to maintain the facilities and provide the services to the animal shelter.
- C. Except as otherwise provided by law, ordinance or regulation, the Division of Code Enforcement shall be responsible for the administration and enforcement of all Town laws, ordinances and regulations.
- (1) The division shall, on complaint or other information, investigate and make all inspections necessary and proper to carry out its duties.
  - (2) All code enforcement personnel properly trained and assigned to the division shall be given the authority to issue appearance tickets under § 4-2 of the North Hempstead Code.
  - (3) All personnel within the division shall work directly with the Office of the Town Attorney on all legal and administrative matters pertaining to the investigation and prosecution of offenses and to the issuance of any appearance tickets and accusatory instruments.
  - (4) Complaint procedures.
    - (a) The Town Board, by resolution, shall adopt procedures for the handling of complaints from the public concerning possible violations of the Town Code. Prior to the adoption of those complaint procedures, the Town Board must solicit the input of the Commissioner.
    - (b) After the initial adoption of the complaint procedures by the Town Board, the Commissioner may propose to the Town Board, in writing, recommended changes to those procedures, and the Town Board, on its own, or based upon the recommendations of the Commissioner, may amend, revise, correct or change the complaint procedures as circumstances or evidence may warrant, but all procedural changes must include consultation with the Commissioner.
- D. The Division of Harbor and Marine Enforcement shall: [Added 6-8-2010 by L.L. No. 6-2010]

- (1) Administer, manage and supervise the operation, management and control of the personnel, equipment and facilities of the Harbor Patrol of the Town of North Hempstead;
- (2) Administer, manage and supervise the placement and regulation of moorings in Town waters;
- (3) Implement the enforcement functions in **Chapters 42 and 69** §§ ~~42-15 and 69-5~~ and implement generally the functions of the Commissioner in Chapters 42 and 69.

E. The Division of Security shall:

- (1) Patrol, secure and protect all Town facilities, including, but not limited to, Town parks, buildings, highway yards and other realty of the Town of North Hempstead, and the performance of other duties as may be deemed necessary by the Town Board or the Commissioner of the Department.
- (2) Enforce parking and Town Code ordinances and regulations in all Town facilities in the unincorporated areas of North Hempstead.
- (3) Undertake occasional patrols of the unincorporated parts of North Hempstead, at any hour of the day, in order to investigate complaints and deter illicit activities, such as, but not limited to, vandalism and illegal dumping on public or private property.
- (4) Respond to emergencies in coordination with other law enforcement and municipal authorities, including, but not limited to, other Town personnel and the Nassau County Police Department.

§ 23-11.5. Special costs and expenses.

All costs and expenses incurred by the Department or its officers or employees on behalf of a special improvement district or special Town project shall be charged against such district or project and paid from the funds duly appropriated for the purpose of such district or project.

§ 23-11.6. Powers of Supervisor.

Nothing herein contained shall be construed to delegate or transfer any power of the Town Supervisor contained in §§ 29, 52 and 125 of the Town Law of the State of New York or any other powers which may be lawfully exercised by said Supervisor.

§ 23-11.7. Fees.

The Commissioner may establish, subject to Town Board approval, a schedule of fees to be collected by him for services rendered in connection with the work of his Department and for which he deems it necessary to charge and collect a fee therefor.

§ 23-11.8. Severability.

If any section, provision or part thereof in this chapter shall be adjudged invalid or unconstitutional by a court of competent jurisdiction, then such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not so adjudged invalid or unconstitutional.

Section 4.

This local law shall become effective upon filing with the Secretary of State.